

RESOLUTION No. 2007-54-561

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THAT CERTAIN PREFERRED BENEFICIARY FORM WITH IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC., A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "A" IN ACCORDANCE WITH THAT CERTAIN MASTER PREFERRED AGREEMENT BETWEEN IRON MOUNTAIN AND SUNGARD OSSI, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "B"; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council approved the purchase of public safety software from SunGard HTE, Inc., and

WHEREAS, although the City purchased the licenses to operate the software system, the actual system is proprietary, and

WHEREAS, in order to protect the City's investment and avoid disclosure of SunGard's proprietary technology, an escrow account must be established to provide retention, administration and controlled access of the proprietary technology materials, and

WHEREAS, Iron Mountain Intellectual Property Management, Inc., will serve as the depository, and

WHEREAS, the cost of using Iron Mountain is \$650.00 for the first year, with annual renewals of no more than five percent (5%),

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

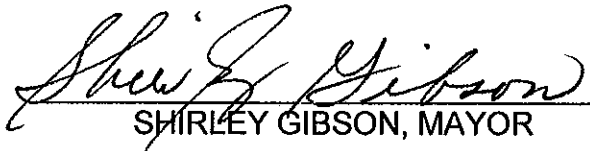
Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORIZATION: The City Manager for the City of Miami Gardens is hereby authorized to execute that certain Preferred Beneficiary Form with Iron Mountain Intellectual Property Management, Inc., a copy of which is attached hereto as Exhibit "A," in accordance with that certain Master Preferred Escrow Agreement between Iron Mountain Intellectual Property Management, Inc., and SunGard OSSI, a copy of which is attached hereto as Exhibit "B."

Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain four (4) fully executed copies of the subject Agreement, with one to be maintained by the City; with one to be delivered to Iron Mountain Intellectual Property Management, Inc., with one to be delivered to SunGard OSSI, and with one to be directed to the Office of City Attorney.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON MARCH 14, 2007.

  
SHIRLEY GIBSON, MAYOR

ATTEST:

  
RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA KNIGHTON DICKENS, ESQ.  
City Attorney

SPONSORED BY: DANNY O. CREW, CITY MANAGER

MOVED BY: Councilwoman Pritchett

SECONDED BY: Councilman Bratton

**VOTE:** 5-1

Mayor Shirley Gibson	<u>x</u> (Yes)	<u>  </u> (No)	
Vice Mayor Oscar Braynon, II	<u>  </u> (Yes)	<u>  </u> (No)	Excused Absence
Councilman Melvin L. Bratton	<u>x</u> (Yes)	<u>  </u> (No)	
Councilman Aaron Campbell	<u>x</u> (Yes)	<u>  </u> (No)	
Councilman Andre' Williams	<u>x</u> (Yes)	<u>  </u> (No)	
Councilwoman Sharon Pritchett	<u>  </u> (Yes)	<u>x</u> (No)	
Councilwoman Barbara Watson	<u>x</u> (Yes)	<u>  </u> (No)	

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## Exhibit ~~G~~ A

### SunGard Software Escrow Agreement

#### PREFERRED BENEFICIARY ACCEPTANCE FORM

Depositor, Preferred Beneficiary and Iron Mountain Intellectual Property Management, Inc. ("IMIPM"), hereby acknowledge that Miami Gardens, FL is the Preferred Beneficiary referred to in the Master Preferred Escrow Agreement effective December 29, 2004 with IMIPM as the escrow agent and SunGard HTE Inc. as the Depositor. Preferred Beneficiary hereby agrees to be bound by all provisions of such Agreement.

NOW THEREFORE, the Escrow Agreement is hereby modified as follows:

1. The second and third sentences of Section 7.4 are hereby deleted in their entirety and replaced with the following: "The arbitrator shall apply Florida law. Arbitration will take place in Miami Dade County, Florida."
2. Section 7.5 is hereby deleted in its entirety and replaced with the following: "this Agreement is to be governed and construed in accordance with the laws of the State of Florida, without regards to its conflict of law provisions."
3. The annual beneficiary fee is current Six Hundred Fifty Dollars (\$650) per year.
4. All terms and conditions of the Agreement not amended by this Amendment shall remain in full force and effect.

Depositor hereby enrolls Preferred Beneficiary to the following account(s):

Account Name

SunGard HTE Inc.

Deposit Account Number

26504

Notices and communications to Preferred Beneficiary should be addressed to:

Company Name: Miami Gardens, FL  
Address: 1515 NW 167<sup>th</sup> Street, Bldg 7  
Suite 403  
Miami Gardens, FL 33169

Invoices should be addressed to:

Designated Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-mail: \_\_\_\_\_

Contact: \_\_\_\_\_

P.O.#, if required: \_\_\_\_\_

Miami Gardens, FL  
Preferred Beneficiary

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

IMIPM

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

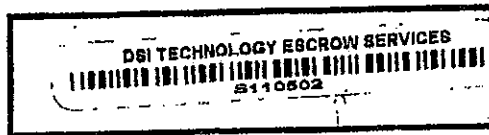
SunGard HTE Inc.  
Depositor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



For Internal Use Only



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## Master Preferred Agreement

Master Preferred offers the flexibility of a modifiable contract combined with a high level of protection for both the depositor and the beneficiary. It allows for additional parties to accept contract conditions with a one-page addendum. It provides frequent correspondence between IMIPM and all parties to the agreement. The depositor and beneficiary will receive signed confirmations from IMIPM that every deposit has been inspected; an account history report to notify them of the status of the escrow; and ongoing monitoring services to ensure compliance of contract terms.

### Purpose

*IMIPM's Master Preferred Agreement is generally used when:*

- Both parties agree that a high level of escrow protection is needed.
- The depositor or the beneficiary wants to establish an escrow contract that is executed once, defining the company's preferred terms.
- The depositor has multiple products to be licensed independently by various beneficiaries.
- Both parties want to reduce the time spent on negotiating the basic terms and conditions of the escrow agreement.
- Clients want to avoid setup costs when adding beneficiaries or depositors to their escrow account.

### Features

*Master Preferred customers benefit from these unique features:*

- One agreement ensures consistency for all escrow requirements.
- Additional parties accept contract conditions with a one-page form.
- Tailored release conditions.
- Modification of terms for unique requirements.
- Written notification detailing the contents of the initial deposit and each update.
- Semiannual account histories listing all deposit activity.
- IMIPM direct billing to beneficiary.
- Technical verification options.
- Audit trail of deposit created through inspection, date stamping of all deposit materials.
- Deposit inspection with signed receipt for all parties.

**Your Iron Mountain Representative is:**

**David Jones**

**2100 Norcross Pkwy, Suite 150**

**Norcross, GA 30071**

**Tel: 770-225-8113**

**FAX 404-745-0027**

**Email: david.jones@ironmountain.com**

David Jones

17 pages

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For More Information Call: (800) 962-0652 or Visit Us At [www.ironmountain.com](http://www.ironmountain.com)

**MASTER PREFERRED ESCROW AGREEMENT**Depositor Company Number 26408

This agreement ("Agreement") is effective December 29, 2004 among Iron Mountain Intellectual Property Management, Inc. ("IMIPM"), Open Software Solutions, Inc., a corporation organized and existing under the laws of North Carolina, doing business as SunGard OSS1, a North Carolina Corporation ("Depositor") and any additional party signing the Acceptance Form attached to this Agreement ("Preferred Beneficiary"), who collectively may be referred to in this Agreement as the parties ("Parties").

A. Depositor and Preferred Beneficiary have entered or will enter into a Licensed Program(s) Support Agreement (referred to in this Agreement as the "Support Agreement") regarding certain proprietary technology of Depositor that has been or will be licensed to Preferred Beneficiary under a Software License and Services Agreement (referred to in this Agreement as the "License Agreement").

B. Depositor desires to avoid disclosure of its proprietary technology except under certain limited circumstances.

C. The availability of the proprietary technology of Depositor is critical to Preferred Beneficiary in the conduct of its business and, therefore, Preferred Beneficiary needs access to the proprietary technology under certain limited circumstances.

D. Depositor and Preferred Beneficiary desire to establish an escrow with IMIPM to provide for the retention, administration and controlled access of the proprietary technology materials of Depositor.

E. The parties desire this Agreement to be supplementary to the Support Agreement pursuant to 11 United States [Bankruptcy] Code, Section 365(n).

**ARTICLE I -- DEPOSITS**

1.1 Obligation to Make Deposit. Upon the signing of this Agreement by the parties, including the signing of the Acceptance Form, and Exhibit D naming the Initial Account, Depositor shall deliver to IMIPM the proprietary technology and other materials ("Deposit Materials") required to be deposited by the Support Agreement or, if the Support Agreement does not identify the materials to be deposited with IMIPM, then such materials will be identified on Exhibit A. If Exhibit A is applicable, it is to be prepared and signed by Depositor and Preferred Beneficiary. IMIPM shall have no obligation with respect to the preparation, accuracy, execution, signing, delivery or validity of Exhibit A.

1.2 Identification of Tangible Media. Prior to the delivery of the Deposit Materials to IMIPM, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other media upon which the Deposit Materials are written or stored. Additionally, Depositor shall complete Exhibit B to this Agreement by listing each such media by the item label description, the type of media and the quantity. Exhibit B shall be signed by Depositor and delivered to IMIPM with the Deposit Materials. Unless and until Depositor makes the initial



deposit with IMIPM, IMIPM shall have no obligation with respect to this Agreement, except the obligation to notify the parties regarding the status of the account as required in Section 2.2 below.

**1.3. Escrow Account Name Identification.** At the time of execution of this agreement, or when Depositor makes the initial deposit with IMIPM in accordance with Section 1.2 above, Depositor shall complete and sign Exhibit D naming the initial account upon which the Deposit Materials are written or stored. Any new deposits referencing new account names made subsequent to the signing of this Agreement, intended by the Depositor to be held in a separate account and maintained separately from the initial account, but made a part of this Agreement, shall be referenced by the Depositor on Exhibit E, and Exhibit E which shall be signed by the Depositor and IMIPM.

**1.4 Acceptance of Deposit.** When IMIPM receives the Deposit Materials, IMIPM will conduct a visual deposit inspection. At completion of the deposit inspection, if IMIPM determines that the labeling of the media matches the item descriptions and quantity on Exhibit B, IMIPM will date and sign Exhibit B and mail a copy thereof to Depositor and Preferred Beneficiary. If IMIPM determines that the labeling does not match the item descriptions or quantity on Exhibit B, IMIPM will (a) note the discrepancies in writing on Exhibit B; (b) date and sign Exhibit B with the exceptions noted; and (c) mail a copy of Exhibit B to Depositor and Preferred Beneficiary. IMIPM's acceptance of the deposit occurs upon the signing of Exhibit B by IMIPM. Delivery of the signed Exhibit B to Preferred Beneficiary is Preferred Beneficiary's notice that the Deposit Materials have been received and accepted by IMIPM. **OTHER THAN IMIPM'S INSPECTION OF THE DEPOSIT MATERIALS, IMIPM SHALL HAVE NO OBLIGATION TO THE ACCURACY, COMPLETENESS, FUNCTIONALITY, PERFORMANCE OR NON-PERFORMANCE OF THE DEPOSIT MATERIALS.**

**1.5 Depositor's Representations.** During the term of this Agreement, Depositor represents as follows:

- a. Depositor lawfully possesses all of the Deposit Materials deposited with IMIPM;
- b. With respect to all of the Deposit Materials and any materials provided solely for verification, pursuant to Section 1.6 of the Agreement ("Test Materials") Depositor has the right and authority to grant to IMIPM and Preferred Beneficiary the rights as provided in this Agreement, provided further that IMIPM's or its independent contractor's use of any Deposit Materials or Test Materials, pursuant to Section 1.6 of this Agreement, is lawful and does not violate the rights of any third parties;
- c. As of the effective date of this Agreement, the Deposit Materials are not the subject of any liens or encumbrances, however, any liens or encumbrances made after the execution of this Agreement will not prohibit, limit, or alter the rights and obligations of IMIPM under this Agreement;
- d. The Deposit Materials consist of the proprietary technology and other materials identified either in the Support Agreement, Exhibit A, or Exhibit B, as the case may be; and
- e. The Deposit Materials are readable and useable in their current form or, if any portion of the Deposit Materials is encrypted, the decryption tools and decryption keys have also been deposited.

**1.6 Available Verification Services.** Upon receipt of a written request from Preferred Beneficiary, IMIPM and Preferred Beneficiary may enter into a separate proposal agreement ("Statement of Work") pursuant to which IMIPM will agree, upon certain terms and conditions, to inspect the Deposit Materials consistent with one or several of the levels of verification described in the attached Technical Verification Options. Depositor consents to IMIPM's performance of any level(s) of verification described in the attached Technical Verification Options. Depositor shall reasonably cooperate with IMIPM by providing its facilities, computer software systems, and technical and support personnel for verification whenever reasonably necessary. If a verification is elected after the Deposit Materials have been delivered to IMIPM, then only IMIPM, or at IMIPM's election, an independent contractor or company selected by IMIPM may perform the verification.

**1.7 Deposit Updates.** Unless otherwise provided by the Support Agreement, Depositor shall update the Deposit Materials within sixty (60) days of each release of a new version of the product, which is subject to the Support Agreement. Such updates will be added to the existing deposit. All deposit updates shall be listed on a new Exhibit B and Depositor shall sign the new Exhibit B. Each Exhibit B will be held and maintained separately within the escrow account. An independent record will be created which will document the activity for each Exhibit B. Any deposit updates shall be held in accordance with Sections 1.2 through 1.5 above. All references in this Agreement to the Deposit Materials shall include the initial Deposit Materials and any updates.

**1.8 Removal of Deposit Materials.** The Deposit Materials may be removed and/or exchanged only on written instructions signed by Depositor and Preferred Beneficiary, or as otherwise provided in this Agreement.

## ARTICLE 2 -- CONFIDENTIALITY AND RECORD KEEPING

**2.1 Confidentiality.** IMIPM shall have the obligation to reasonably protect the confidentiality of the Deposit Materials. Except as provided in this Agreement or any subsequent agreement between the Parties, including without limitation Section 1.6, IMIPM shall not disclose, transfer, make available, or use the Deposit Materials. IMIPM shall not disclose the terms of this Agreement to any third party. If IMIPM receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Materials, IMIPM will immediately notify the parties to this Agreement unless prohibited by law. It shall be the responsibility of Depositor and/or Preferred Beneficiary to challenge any such order; provided, however, that IMIPM does not waive its rights to present its position with respect to any such order. IMIPM will not be required to disobey any order from a court or other judicial tribunal, including, but not limited to, notices delivered pursuant to Section 7.6 below.

**2.2 Status Reports.** IMIPM shall provide to Depositor and Preferred Beneficiary a report profiling the account history semiannually.

## ARTICLE 3 -- RIGHT TO MAKE COPIES

**3.1 Right to Make Copies.** IMIPM shall have the right to make copies of the Deposit Materials as reasonably necessary to perform this Agreement. IMIPM shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on the Deposit Materials onto any

copies made by IMIPM. With all Deposit Materials submitted to IMIPM, Depositor shall provide any and all instructions as may be necessary to duplicate the Deposit Materials, including, but not limited to, the hardware and/or software needed. Any copying expenses incurred by IMIPM as a result of a request to copy will be borne by the party requesting the copies. Alternatively, IMIPM may notify Depositor requiring its reasonable cooperation in promptly copying the Deposit Materials in order for IMIPM to perform this Agreement.

#### ARTICLE 4 -- RELEASE OF DEPOSIT

4.1 Release Conditions. As used in this Agreement, "Release Condition" shall mean the following:

- a. Depositor's failure to carry out obligations imposed on it pursuant to the Support Agreement;
- b. Depositor's failure to continue to do business in the ordinary course; or
- c. Joint written instruction from Depositor and Preferred Beneficiary.

4.2 Filing For Release. If Preferred Beneficiary believes in good faith that a Release Condition has occurred, Preferred Beneficiary may provide to IMIPM written notice of the occurrence of the Release Condition and a request for the release of the Deposit Materials. Such notice shall be signed by the Preferred Beneficiary and on company letterhead. Unless IMIPM acknowledges or discovers independently, or through the Parties, its need for additional documentation or information in order to comply with this Section, IMIPM shall promptly provide a copy of the notice to Depositor by commercial express mail. Such need for additional documentation or information may extend the time period for IMIPM's performance under this Section.

4.3 Contrary Instructions. From the date IMIPM mails the notice requesting release of the Deposit Materials, Depositor shall have ten (10) business days to deliver to IMIPM contrary instructions ("Contrary Instructions"). Contrary Instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured. Contrary Instructions shall be signed by Depositor and on company letterhead. Upon receipt of Contrary Instructions, IMIPM shall promptly send a copy to Preferred Beneficiary by commercial express mail. Additionally, IMIPM shall notify both Depositor and Preferred Beneficiary that there is a dispute to be resolved pursuant to Section 7.4 of this Agreement. Subject to Section 5.2 of this Agreement, IMIPM will continue to store the Deposit Materials without release pending (a) joint instructions from Depositor and Preferred Beneficiary; (b) dispute resolution pursuant to Section 7.4; or (c) an order from a court of competent jurisdiction.

4.4 Release of Deposit. If IMIPM does not receive Contrary Instructions from the Depositor, IMIPM is authorized to release the Deposit Materials to the Preferred Beneficiary or, if more than one beneficiary is registered to the deposit, to release a copy of the Deposit Materials to the Preferred Beneficiary. However, IMIPM is entitled to receive any fees due IMIPM before making the release. Any copying expenses will be chargeable to Preferred Beneficiary. Upon any such release, the escrow arrangement will terminate as it relates to the Depositor and Preferred Beneficiary involved in the release.

4.5 Right to Use Following Release. Unless otherwise provided in the Support Agreement, upon release of the Deposit Materials in accordance with this Article 4, Preferred Beneficiary shall have the right to use the Deposit Materials for the sole purpose of continuing the benefits afforded to Preferred Beneficiary by the License Agreement. Preferred Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Materials.

## ARTICLE 5 -- TERM AND TERMINATION

5.1 Term of Agreement. The initial term of this Agreement is for a period of one (1) year. Thereafter, this Agreement shall automatically renew from year to year unless (a) Depositor and Preferred Beneficiary jointly instruct IMIPM in writing that the Agreement is terminated; (b) IMIPM instructs Depositor and Preferred Beneficiary in writing after its renewal date that the Agreement is terminated for nonpayment in accordance with Section 5.2; or (c) IMIPM reserves the right to terminate this Agreement, for any reason, other than for nonpayment, by providing Depositor and Preferred Beneficiary sixty (60) days written notice of its intent to terminate this Agreement. If the Deposit Materials are subject to another escrow agreement with IMIPM, IMIPM reserves the right, after the initial one year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements.

5.2 Termination for Nonpayment. In the event of the nonpayment of fees owed to IMIPM, IMIPM shall provide written notice of delinquency to all parties to this Agreement. Any party to this Agreement affected by such delinquency shall have the right to make the payment to IMIPM to cure the default. If the past due payment is not received in full by IMIPM within one (1) month of the date of such notice, then IMIPM shall have the right to terminate this Agreement at any time thereafter to the extent it relates to the delinquent party by sending written notice of termination to such affected parties. IMIPM shall have no obligation to take any action under this Agreement so long as any payment due to IMIPM remains unpaid.

5.3 Disposition of Deposit Materials Upon Termination. Subject to the foregoing termination provisions, and upon termination of this Agreement, IMIPM shall destroy, return, or otherwise deliver the Deposit Materials in accordance with Depositor's instructions. If there are no instructions, IMIPM may, at its sole discretion, destroy the Deposit Materials or return them to Depositor. IMIPM shall have no obligation to destroy or return the Deposit Materials if the Deposit Materials are subject to another escrow agreement with IMIPM or have been released to the Preferred Beneficiary in accordance with Section 4.4.

5.4 Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:

- a. The obligations of confidentiality with respect to the Deposit Materials;
- b. The obligation to pay IMIPM any fees and expenses due;
- c. The provisions of Article 7; and
- d. Any provisions in this Agreement which specifically state they survive the termination of this Agreement.

## ARTICLE 6 -- IMIPM'S FEES

6.1 Fee Schedule. IMIPM is entitled to be paid its standard fees and expenses applicable to the services provided. IMIPM shall notify the party responsible for payment of IMIPM's fees at least sixty (60) days prior to any increase in fees. For any service not listed on IMIPM's standard fee schedule, IMIPM will provide a quote prior to rendering the service, if requested.

6.2 Payment Terms. IMIPM shall not be required to perform any service, including release of any Deposit Materials under Article 4, unless the payment for such service and any outstanding balances owed to IMIPM are paid in full. Initial fees are due upon receipt of a signed contract or receipt of the Deposit Materials whichever is earliest. Payments on all renewal and services invoices are due net thirty (30) days from date of invoice. If invoiced fees are not paid, IMIPM may terminate this Agreement in accordance with Section 5.2.

## ARTICLE 7 -- LIABILITY AND DISPUTES

7.1 Right to Rely on Instructions. IMIPM may act in reliance upon any instruction, instrument, or signature reasonably believed by IMIPM to be genuine. IMIPM may assume that any employee of a party to this Agreement who gives any written notice, request, or instruction has the authority to do so. IMIPM will not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. IMIPM shall not be responsible for failure to act as a result of causes beyond the reasonable control of IMIPM.

7.2 Indemnification. Depositor and Preferred Beneficiary each agree to indemnify, defend and hold harmless IMIPM from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities ("Liabilities") incurred by IMIPM relating in any way to this escrow arrangement except where it is adjudged that IMIPM acted with gross negligence or willful misconduct.

7.3 Limitation of Liability. In no event will IMIPM be liable for any incidental, indirect, special, exemplary, punitive or consequential damages, including, but not limited to, loss of data, revenue, and/or profits, costs, or expenses (including legal fees and expenses), whether foreseeable or unforeseeable, that may arise out of or in connection with this Agreement; and in no event shall the collective liability of IMIPM exceed ten times the fees paid under this Agreement. The foregoing limitation of liability does not apply with respect to any acts of gross negligence, personal injury claims, property damage claims (excluding the Deposit), or intellectual property infringement.

7.4 Dispute Resolution. Any dispute relating to or arising from this Agreement shall be submitted to, and settled by arbitration by, a single arbitrator chosen by the San Diego Regional Office of the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association. The arbitrator shall apply California law. Unless otherwise agreed by Depositor and Preferred Beneficiary, arbitration will take place in San Diego, California, U.S.A. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by First Class mail or by commercial express mail, to the attorney for the party or, if unrepresented, to the party at the last known business address. If, however, Depositor and/or Preferred Beneficiary refuses to submit to arbitration, the matter shall not be submitted to arbitration and IMIPM may submit the matter to any court of competent jurisdiction for an interpleader or similar action. Unless adjudged otherwise, any costs of

arbitration incurred by IMIPM, including reasonable attorney's fees and costs, shall be divided equally and paid by Depositor and Preferred Beneficiary.

7.5 Controlling Law. This Agreement is to be governed and construed in accordance with the laws of the State of California, without regard to its conflict of law provisions.

7.6 Notice of Requested Order. If any party intends to obtain an order from the arbitrator or any court of competent jurisdiction, which may direct IMIPM to take, or refrain from taking any action, that party shall:

- a. Give IMIPM at least five (5) business days prior notice of the hearing;
- b. Include in any such order that, as a precondition to IMIPM's obligation, IMIPM be paid in full for any past due fees and be paid for the reasonable value of the services to be rendered pursuant to such order; and
- c. Ensure that IMIPM not be required to deliver the original (as opposed to a copy) of the Deposit Materials if IMIPM may need to retain the original in its possession to fulfill any of its other duties.

## ARTICLE 8 – GENERAL PROVISIONS

8.1 Entire Agreement. This Agreement, which includes the Acceptance Form and Exhibits described herein, embodies the entire understanding among all of the parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. IMIPM is not a party to the Support Agreement between Depositor and Preferred Beneficiary and has no knowledge of any of the terms or provisions of any such Support Agreement. IMIPM's only obligations to Depositor or Preferred Beneficiary are as set forth in this Agreement. No amendment or modification of this Agreement shall be valid or binding unless signed by all the parties hereto, except that Exhibit A need not be signed by IMIPM, Exhibit B need not be signed by Preferred Beneficiary, Exhibit C need not be signed, Exhibit D need not be signed by Preferred Beneficiary or IMIPM and the Acceptance Form need only be signed by the parties identified therein.

8.2 Notices and Correspondence. All notices regarding Articles 4 and 5, and any Deposit Materials, shall be sent by commercial express or certified mail, return receipt requested. All other correspondence including invoices, payments, and other documents and communications shall be sent First Class U.S. Mail and given to the parties at the addresses specified in the attached Exhibit C and Acceptance Form. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of physical and e-mail addresses. The parties shall have the right to rely on the last known address of the other parties. Any correctly addressed notice or last known address of the other parties that is relied on herein that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities by mail, through messenger or commercial express delivery services.

8.3 Severability. In the event any provision of this Agreement is found to be invalid or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this

Agreement, such invalidity or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

8.4 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties. However, IMIPM shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Preferred Beneficiary unless IMIPM receives clear, authoritative and conclusive written evidence of the change of parties.

8.5 Waiver. Any term of this Agreement may be waived by the party entitled to the benefits thereof, provided that any such waiver must be in writing and signed by the party against whom the enforcement of the waiver is sought. No waiver of any condition, or breach of any provision of this Agreement, in any one or more instances, shall be deemed to be a further or continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy shall not be deemed the waiver of that right or remedy.

8.6 Regulations. Depositor and Preferred Beneficiary are responsible for and warrant compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Deposit Materials may be delivered in accordance with the provisions of this Agreement.

8.7 Attorney's Fees. In any litigation or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks declaration of any rights or obligations under this Agreement (whether in contract, tort, or both), the prevailing party who has proven in court by court decree, judgment or arbitrator's determination that the other party has materially breached its representation and/or warranty under this Agreement shall be awarded reasonable attorneys' fees, together with any costs and expenses, to resolve the dispute and to enforce final judgment.

8.8 No Third Party Rights. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the parties hereto.

8.9 Authority to Sign. Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement. IMIPM will be able to perform its obligations under this agreement once IMIPM has received a fully executed agreement.

8.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. Iron Mountain Intellectual Property Management, Inc.

Depositor

IMIPM

By: *Gil Santos*By: *Donna Pineda*Name: *Gil Santos*Name: *Donna Pineda*Title: *President*Title: *MGR, CSR NATL*Date: *12/29/04*Date: *12/29/04*

Approved as to Operational Content:  
DSI Technology Operations

Name: Yolanda Granberry,  
Operations Assistant

Date:



## EXHIBIT A

## MATERIALS TO BE DEPOSITED

Deposit Account Number 26504

Depositor represents to Preferred Beneficiary that Deposit Materials delivered to IMIPM shall consist of the following:

Depositor	Preferred Beneficiary
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

## EXHIBIT B

## DESCRIPTION OF DEPOSIT MATERIALS

Depositor Company Name \_\_\_\_\_

Deposit Account Number \_\_\_\_\_ 216504 \_\_\_\_\_

Product Name \_\_\_\_\_ Version \_\_\_\_\_

(Product Name will appear as Exhibit B Name on Account History report)

## DEPOSIT MATERIAL DESCRIPTION:

Quantity	Media Type & Size	Label Description of Each Separate Item
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_____	Disk 3.5" or _____	
_____	DAT tape _____ mm	
_____	CD-ROM	
_____	Data cartridge tape _____	
_____	TK 70 or _____ tape	
_____	Magnetic tape _____	
_____	Documentation	
_____	Other _____	

## PRODUCT DESCRIPTION:

Environment \_\_\_\_\_

## DEPOSIT MATERIAL INFORMATION:

Is the media or are any of the files encrypted? Yes / No If yes, please include any passwords and the decryption tools.

Encryption tool name \_\_\_\_\_ Version \_\_\_\_\_

Hardware required \_\_\_\_\_

Software required \_\_\_\_\_

Other required information \_\_\_\_\_

I certify for Depositor that the above described the

IMIPM has visually inspected and accepted

Deposit Materials have been transmitted to IMIPM: above materials (any exceptions are noted above):

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

E-mail: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date Accepted: \_\_\_\_\_

Exhibit B#: \_\_\_\_\_

## EXHIBIT C

## DESIGNATED CONTACT

Depositor Company Number 26408

Notices, deposit material returns and  
communications to Depositor should  
be addressed to:

Company Name: SunGard OSSI  
Address: 1000 Business Center Drive  
Lake Mary, FL 32746

Designated Contact: George Sereikas, Manager  
Contracts Services

Telephone: 40-7-304-3158

Facsimile: 407-304-1045

E-mail: gsereikas@hteinc.com

Verification Contact:

Telephone/E-mail:

Invoices to Depositor should be  
addressed to:

SunGard OSSI  
1000 Business Center Drive  
Lake Mary, FL 32746

Contact: Lisa Bryant

P.O.#, if required:

Requests to change the designated contact should be given in writing by the designated contact or  
an authorized employee.

Agreements, Deposit Materials and notices  
to IMIPM should be addressed to: (select  
location)

Attn: David Jones  
2100 Norcross Parkway, Suite 150  
Norcross, GA 30071  
Telephone: 770-239-9200  
Facsimile: 404-745-0027  
E-mail: david.jones@ironmountain.com

All invoice fee remittances to IMIPM should  
be addressed to:

Iron Mountain Intellectual Property  
Management, Inc.  
PO Box 27131  
New York, NY 10087-7131

Date: \_\_\_\_\_

## EXHIBIT D

NAME OF INITIAL MASTER PREFERRED  
ESCROW ACCOUNTDepositor Company Number 26408

\_\_\_\_\_ ("Depositor") has entered into a Master Preferred Escrow Agreement with Iron Mountain Intellectual Property Management, Inc. ("IMIPM"). Pursuant to that Agreement, Depositor may deposit certain Deposit Materials with IMIPM.

The initial account will be referenced by the following name: \_\_\_\_\_

Deposit Account Number \_\_\_\_\_

\_\_\_\_\_  
Depositor \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT E

ADDITIONAL ESCROW ACCOUNT  
TO MASTER PREFERRED ESCROW AGREEMENTDepositor Company Number 26408

New Deposit Account Number \_\_\_\_\_

\_\_\_\_\_ ("Depositor") has entered into a Master Preferred Escrow Agreement with Iron Mountain Intellectual Property Management, Inc. ("IMIPM"). Pursuant to that Agreement, Depositor may deposit certain Deposit Materials with IMIPM.

Depositor desires that new Deposit Materials be held in a separate account and be maintained separately from the initial account. By execution of this Exhibit E, IMIPM will establish a separate account for the new Deposit Materials. The new account will be referenced by the following name: \_\_\_\_\_

Depositor hereby agrees that all terms and conditions of the existing Master Preferred Escrow Agreement previously entered into by Depositor and IMIPM will govern this account. The termination or expiration of any other account of Depositor will not affect this account.

\_\_\_\_\_ Iron Mountain Intellectual Property Management, Inc.

Depositor

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# **PREFERRED BENEFICIARY ACCEPTANCE FORM**

Depositor, Preferred Beneficiary and Iron Mountain Intellectual Property Management, Inc. ("IMIPM"), hereby acknowledge that \_\_\_\_\_ is the Preferred Beneficiary referred to in the Master Preferred Escrow Agreement effective \_\_\_\_\_, 20\_\_\_\_ with IMIPM as the escrow agent and \_\_\_\_\_ as the Depositor. Preferred Beneficiary hereby agrees to be bound by all provisions of such Agreement.

Depositor hereby enrolls Preferred Beneficiary to the following account(s):

Account Name

Deposit Account Number

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices and communications to Preferred Beneficiary should be addressed to:

Invoices should be addressed to:

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Designated Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-mail: \_\_\_\_\_

Contact: \_\_\_\_\_

P.O.#, if required: \_\_\_\_\_

Preferred Beneficiary

Depositor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Iron Mountain Intellectual Property  
Management, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## TECHNICAL VERIFICATION OPTIONS

### LEVEL I - Inventory

This series of tests provides insight into whether the necessary information required to recreate the Depositor's development environment has been properly stored in escrow. These tests detect errors that often inhibit effective use of the escrow deposit.

*Steps include:* Analyzing deposit media readability, virus scanning, developing file classification tables, identifying the presence/absence of build instructions, and identifying materials required to recreate the Depositor's software development environment. At completion of testing, IMIPM will distribute a report to Preferred Beneficiary detailing IMIPM's investigation. This report will include build instructions, file classification tables and listings. In addition, the report will list required software development materials, including, without limitation, required source code languages and compilers, third-party software, libraries, operating systems, and hardware, as well as IMIPM's analysis of the deposit. When identifying materials required to recreate Depositor's software development environment, IMIPM will rely on information provided in Depositor's completed questionnaire (obtained via a IMIPM verification representative) and/or information gathered during IMIPM's testing experience.

### LEVEL II - Build

This series of tests includes a standard effort to compile the Deposit Materials and build executable code.

*Steps include:* Recreating the Depositor's software development environment, compiling source files and modules, recreating executable code, and providing a listing of the hardware and software configurations necessary to recreate the Depositor's software development environment. IMIPM will also create a report detailing the steps necessary to recreate the development environment, problems encountered with testing, and IMIPM's analysis of the deposit.

### LEVEL III - Validation

A Level III verification consists of testing the functionality of the compiled Deposit Materials (in a production setting or similar environment) and can be accomplished through one of the following three options:

- Option A* – With the Depositor's approval, executables created by IMIPM during Level II testing are provided to the Preferred Beneficiary for functionality testing.
- Option B* – The Preferred Beneficiary provides IMIPM with a copy of its licensed executables. IMIPM compares the executables created during Level II testing with the licensed executables and provides a comparison report to all parties.
- Option C* – IMIPM recreates the runtime environment for the licensed technology and installs the executables created during the Level II testing into that environment. (The environment is generally "scaled down" from the actual live environment.) IMIPM then runs test scripts supplied by the Preferred Beneficiary and provides a report of the test results to all parties. This may require Depositor approval.

For additional information about IMIPM Technical Verification Services, please contact a verification specialist at (770) 225-8813 or by e-mail at [david.jones@ironmountain.com](mailto:david.jones@ironmountain.com).

# City of Miami Gardens

1515-200 NW 167<sup>th</sup> Street  
Miami Gardens, Florida 33169



Mayor Shirley Gibson  
Vice Mayor Oscar Braynon II  
Councilman Melvin L. Bratton  
Councilman Aaron Campbell  
Councilman Andre Williams  
Councilwoman Sharon Pritchett  
Councilwoman Barbara Watson

## MEMORANDUM

To: Mayor and City Council

From: Dr. Danny O. Crew  
City Manager

Date: March 14, 2007

Re: Proposed Resolution authorizing the City Manager to execute a master escrow agreement

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The City Council approved the purchase of public safety software from SunGard HTE, Inc. (Approval of this software is on an earlier item on this agenda). Iron Mountain Intellectual Property Management, Inc. located in Dallas, Texas, provided an individual contract for services which are being administered through SunGard HTE. Sungard HTE provided this contract to the City of Miami Gardens as part of their service package and will receive payment from the City on behalf of this company.

The City purchased the licenses to operate the software system, the actual system is proprietary. In order to protect the City's investment and avoid disclosure of SunGard's proprietary technology, an escrow account must be established to provide retention, administration and controlled access of the proprietary technology materials. Iron Mountain Intellectual Property Management, Inc. is the depository. The cost is \$650.00 maintenance for the first year payable to SunGard HTE, Inc. Annual renewals may be increased no more than 5% per year

**Recommendation:** That the City Council approve the attached resolution authorizing the City Manager to execute an agreement with Iron Mountain Intellectual Property management, Inc.

**J-4B) CONSENT AGENDA  
RESOLUTION  
IRON MOUNTAIN NTELLECTURAL  
PROPERTY MANAGEMENT, INC.**